

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES of AMERICA,)	
Plaintiff,)	
and)	
THE STATE OF DELAWARE,)	
STATE OF LOUISIANA, and the)	
NORTHWEST AIR POLLUTION)	
AUTHORITY OF THE STATE OF)	
WASHINGTON, AND SIERRA)	Civil Action
CLUB,)	No. H-01-0978
Plaintiff-Interveners,)	Honorable Melinda Harmon
v.)	
)	
MOTIVA ENTERPRISES LLC,)	
EQUILON ENTERPRISES LLC,)	
and DEER PARK REFINING)	
LIMITED PARTNERSHIP,)	
Defendants.)	
)	

THIRD ADDENDUM TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter “the United States”), the State of Delaware, the State of Louisiana, the Northwest Air Pollution Authority of the State of Washington (hereinafter collectively referred to as the “State Plaintiffs”), Motiva Enterprises LLC (hereinafter “Motiva”), Equilon Enterprises LLC (“Equilon”) and Deer Park Refining Limited Partnership (“Deer Park”) are parties to a Consent Decree entered by this Court on August 20, 2001, and amended on May 29, 2002 and December 24, 2003 (hereinafter “the Heater and Boiler Consent Decree”); and

WHEREAS, Motiva has agreed to sell, and The Premcor Refining Group Inc. (hereinafter “Premcor”) has agreed to buy, certain refinery assets covered by the Heater

and Boiler Consent Decree and located in Delaware City, Delaware (hereinafter “the Delaware City Refinery”); and

WHEREAS, Premcor has contractually agreed to assume the obligations, rights and benefits, and to be bound by the terms and conditions, of the Heater and Boiler Consent Decree as it applies to the Delaware City Refinery; and

WHEREAS, Premcor represents that it has the financial and technical ability to assume the obligations and liabilities, and may secure the rights and benefits, of the Heater and Boiler Consent Decree as it relates to the Delaware City Refinery; and

WHEREAS, the United States, the State Plaintiffs, Motiva, Equilon, Deer Park (Motiva, Equilon and Deer Park are hereinafter collectively referred to as “the Shell/Motiva Companies”) and Premcor have reviewed and each hereby consents to this Third Addendum;

NOW THEREFORE, the United States, the State Plaintiffs, the Shell/Motiva Companies and Premcor hereby agree that, upon approval of this Third Addendum by the Court, the Heater and Boiler Consent Decree shall thereby be amended as follows:

1. Upon the date and time of completion of the transfer of ownership in the Delaware City Refinery (hereinafter “Closing Date”), Premcor by its purchase of the Delaware City Refinery assumes the obligations and liabilities, and secures the rights and benefits, of the Consent Decree as it pertains to the Delaware City Refinery in accordance with Paragraph 3, Part II, Applicability.

2. Except as provided below, after the Closing Date and upon entry by the Court of this Addendum, Motiva is released from its obligations and liabilities, but retains all rights and benefits, under the Consent Decree as it relates to the Delaware City

Refinery.

3. This Addendum only applies if the Closing Date occurs. In addition, if the Closing Date does not occur, Premcor bears no liability nor gains any rights or benefits under the Consent Decree, and Motiva's rights, benefits, obligations and liabilities are unaffected.

4. Nothing in this Addendum affects the provisions of the Consent Decree relative to the Norco, Convent, Port Arthur, Bakersfield, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries. In no event shall Premcor bear any liability under the Consent Decree relative to the Norco, Convent, Port Arthur, Bakersfield, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries.

5. Premcor shall not be responsible for any portion of the Supplemental and Beneficial Environmental Projects provided for in Section VIII, nor Civil Penalty provided for in Section IX of the Heater and Boiler Consent Decree, which the United States and the State Plaintiffs hereby acknowledge has been paid in full.

6. Paragraph 4 of the Heater and Boiler Consent Decree is replaced with the following:

4. The Shell/Motiva Companies operate eight (8) petroleum refineries, and Premcor operates one (1) petroleum refinery, covered by this Consent Decree for the manufacture of various petroleum-based products, including gasoline, diesel and jet fuels, and other marketable petroleum by-products.

7. Paragraph 5 is replaced with the following:

5(a) Motiva and Equilon own and operate refineries located as follows:

Norco, Louisiana (Motiva)
Convent, Louisiana (Motiva)

Port Arthur, Texas (Motiva)
Bakersfield, California (Equilon)
Los Angeles, California (Equilon)
Martinez, California (Equilon)
Puget Sound, Washington (Equilon)

- (b) The Deer Park, Texas refinery is owned by Deer Park Refining Limited Partnership (DRRLP), and operated by its general partner, Shell Oil Company.
- (c) Premcor owns and operates a refinery located at Delaware City, Delaware.

A. Section V. NO_x and SO₂ Emissions Reductions From Heaters and Boilers

- 1. Paragraph 9 is replaced with the following:

9. On or before December 31, 2008, the Shell/Motiva Companies and Premcor shall complete programs to reduce the overall NO_x emissions from the Controlled Heaters and Boilers at their refineries in an amount greater than or equal to 6,920 tons per year. The Shell/Motiva Companies shall achieve 5,126 tons per year of these reductions at the Shell/Motiva Company Refineries, and Premcor shall achieve 1,794 tons per year of these reductions at the Delaware City Refinery, each as demonstrated by the inequality in paragraph 10, with no use of emission caps in the demonstration; provided however that the companies may propose for EPA approval an adjustment of the allocation of NO_x emission reductions to be achieved at the Shell/Motiva Company Refineries and at the Delaware City Refinery, and the adjusted allocation shall be effective upon EPA's approval. EPA shall approve the adjustment if the proposed reallocation is consistent with the requirements of paragraphs 12, 14 and 15 of this Consent Decree, and the proposed reallocation provides that total NO_x emission reductions to be achieved from all refineries governed by this Consent Decree will be equal to or greater than 6,920 tons per year, in the aggregate, in accordance with this paragraph. Any proposed reallocation under this paragraph that satisfies the foregoing criteria will be deemed approved sixty (60) days after the companies submit the joint request for reallocation unless EPA objects to such reallocation within such timeframe in accordance with this paragraph.

- 2. Paragraph 10 shall be replaced with the following:

10. The Shell/Motiva Companies' or Premcor's selection of control technology must at a minimum reduce overall NO_x emissions from the Controlled Heaters and Boilers by at least *X* tons per year from a prior actual to future allowable basis so as to satisfy the following

inequality.

$\sum_{i=1}^n [(E_{\text{Actual}})_i - (E_{\text{Allowable}})_i]$ greater than or equal to X tons of NOx per year

$i = 1$

Where:

$(E_{\text{Allowable}})_i$ = [(The requested portion of the permitted allowable pounds of NOx per million BTU for heater or boiler i)/(2000 pounds per ton)] x [(the lower of permitted or maximum heat input rate capacity in million BTU per hour for heater or boiler i) x (the lower of 8760 or permitted hours per year)] ;

$(E_{\text{Actual}})_i$ = The tons of NOx per year prior actual emissions (unless prior actuals exceed allowable emissions, then use allowable) as shown in Attachment 1 for controlled heater or boiler i ; and

n = The number of heaters and boilers at the Shell/Motiva Companies' or Premcor's, as applicable, refineries that are controlled.

X = The allocated tons per year of reductions established for the Shell/Motiva Companies and for the Delaware City Refinery, as applicable, according to the provisions of paragraph 9.

3. Paragraph 12 shall be replaced with the following:

12. By December 31, 2004, the Shell/Motiva Companies shall achieve 3668 tons per year, and Premcor shall achieve 945 tons per year (equal, in the aggregate, to 2/3rds of 6920 tons per year) of the NOx emissions reductions from the Controlled Heaters and Boilers required under Paragraph 9; provided, however, that the Shell/Motiva Companies and Premcor may propose for EPA approval an adjustment of the allocation of NOx emission reductions to be achieved at the Shell/Motiva Company Refineries and at the Delaware City Refinery, and the adjusted allocation shall be effective upon EPA's approval. EPA shall approve the adjustment if the proposed reallocation provides that total NOx emission reductions to be achieved by December 31, 2004 from all refineries governed by this Consent Decree will be equal to

or greater than 4,613 tons per year, in the aggregate, in accordance with this paragraph. Any proposed reallocation under this paragraph that satisfies the foregoing criterion will be deemed approved sixty (60) days after the companies submit the joint request for reallocation, unless EPA objects to such reallocation within such timeframe in accordance with this paragraph.

The Shell/Motiva Companies and Premcor, as applicable, shall demonstrate compliance with these respective requirements by demonstrating in their respective March 31, 2005 annual reports that they have installed NOx controls and applied for enforceable limits that will achieve the required reductions, pursuant to Part VI (Permitting). For purposes of this Consent Decree, "applied for" shall mean that the Shell/Motiva Companies or Premcor, as applicable, have or has submitted complete and timely applications for the appropriate permit, permit modification, and/or permit waiver.

4. The Heater and Boiler Consent Decree is amended to add the following paragraph after existing Paragraph 13:

13(a). Joint and several liability shall not attach to Premcor. Premcor shall only be liable for compliance obligations under the Consent Decree applicable to the Delaware City Refinery, and shall only be liable for any of those obligations that are to be satisfied under the Consent Decree subsequent to the Closing Date.

5. The Heater and Boiler Consent Decree is amended to add the following paragraph after existing Paragraph 16:

16(a) Premcor shall describe in an annual report to the EPA the progress Premcor has made in reducing NOx emissions from heaters and boilers at the Delaware City Refinery. This submittal shall include all information required by Paragraph 16(i) – (x).

6. Paragraph 17 shall be amended to include the words "or Paragraph 16(a)" after the words: "The Control Plan and Updates required under Paragraph 16."

B. Section VII. Emission Credit Generation

1. Paragraph 29 of the Heater and Boiler Consent Decree is amended by adding a new sentence to the end of the existing language as follows:

The credits available pursuant to this paragraph shall be allocated between the Shell/Motiva Companies and Premcor as follows:

NO_x credits available to the Shell/Motiva Companies = 74 tons per year.

NO_x credits available to Premcor = 26 tons per year.

SO₂ credits available to the Shell/Motiva Companies = 74 tons per year.

SO₂ credits available to Premcor = 26 tons per year.

The above tons per year of NO_x and SO₂ credits available to the Shell/Motiva Companies and Premcor may be adjusted as between the Shell/Motiva Companies and Premcor upon joint notification by the Shell/Motiva Companies and Premcor to EPA, provided that the total credits available to the Shell/Motiva Companies and Premcor shall not exceed, in the aggregate, 100 tons per year for NO_x and 100 tons per year for SO₂.

2. Paragraph 31 of the Heater and Boiler Consent Decree is amended by adding a new sentence to the end of the existing language as follows:

The credits available pursuant to this paragraph shall be allocated between the Shell/Motiva Companies and Premcor as follows:

NO_x credits available to the Shell/Motiva Companies = 193 tons per year.

NO_x credits available to Premcor = 67 tons per year.

SO₂ credits available to the Shell/Motiva Companies = 370 tons per year.

SO₂ credits available to Premcor = 130 tons per year.

The above tons per year of NO_x and SO₂ credits available to the Shell/Motiva Companies and Premcor may be adjusted as between the Shell/Motiva Companies and Premcor upon joint notification by the Shell/Motiva Companies and Premcor to EPA, provided that the total credits available to the Shell/Motiva Companies and Premcor shall not exceed, in the aggregate, 260 tons per year for NO_x and 500 tons per year for SO₂.

C. Section XII. Stipulated Penalties

1. The first sentence of Paragraph 44 is replaced with the following:

The Shell/Motiva Companies or Premcor, as applicable, shall pay stipulated penalties to the United States and the appropriate State Plaintiff (split 50 percent to each), for each failure by the respective company to comply with the terms of this Consent Decree applicable to such company; provided however that in no event shall Premcor be responsible for stipulated penalties for any matter concerning the Norco, Convent, Port Arthur, Bakersfield, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries, nor for any matter concerning the Delaware City Refinery related to actions or omissions first occurring prior to the Closing Date; and provided further that the United States and the appropriate State Plaintiff may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Consent Decree.

2. Paragraph 44(a) shall be replaced with the following:

44(a). Failure to achieve the emissions reductions in accordance with Paragraph 12: \$200,000 per quarter, per refinery.

D. Section XIV. Effect of Settlement.

1. The final sentence of Paragraph 68(a) of the Heater and Boiler Consent

Decree shall be replaced by the following:

During the life of this Consent Decree, the units described in paragraphs 68(a) and 68(b) shall be on a compliance schedule, and to the extent that the Shell/Motiva Companies and Premcor, as applicable, take required actions after obtaining all necessary permits to satisfy the compliance schedule, the releases of liability set forth in

paragraphs 68(a) and 68(b) shall extend to the Shell/Motiva Companies or Premcor, as applicable, through the time of the Shell/Motiva Companies' or Premcor's satisfactory completion of the applicable compliance schedule. Further, any modification (as defined in 40 C.F.R. § 52.21) to the units which is not required by this Consent Decree is beyond the scope of this release. In addition, this paragraph shall not be construed to grant any release to Motiva or Premcor for new violations that originated after August 20, 2001 (the date of entry of the Consent Decree), and this paragraph does not affect any releases in Paragraphs 68(a) and 68(b).

E. Section XV. General Provisions

1. Paragraph 75 shall be further amended to include the following information:

As to Premcor:

James Fedena, Manager
Environment, Health & Safety
The Premcor Refining Group Inc.
2000 Wrangle Hill Road
Delaware City, DE 19706

With a copy to:

Jeffrey Dill, Esquire
Assistant General Counsel
The Premcor Refining Group Inc.
1700 East Putnam, Suite 500
Old Greenwich, CT 06870

As to Plaintiff-Intervenor, the State of Delaware adding:

Valerie S. Csizmadia, Deputy Attorney General
Office of the Attorney General
102 W. Water Street, Third Floor
Dover, DE 19904

F. Section XV. Termination

1. Paragraph 83 of the Heater and Boiler Consent Decree shall be replaced by the following:

83a. All provisions of this Consent Decree applicable to the Shell/Motiva Companies shall be subject to termination upon motion by the United States, the State Plaintiff or the Shell/Motiva Companies after the Company satisfies all requirements of this Consent Decree applicable to the Shell/Motiva Companies. The requirements for termination for the Shell/Motiva Companies, as to the Norco, Convent, Port Arthur, Bakersfield, Los Angeles, Martinez, Puget Sound, and Deer Park Refineries include payment of all stipulated penalties that may be due to the United States or the State Plaintiff under this Consent Decree, installation of control technology systems as specified herein, the performance of all other consent decree requirements, the receipt of all permits specified herein, and EPA's receipt of the first calendar quarterly progress report following the conclusion of the Shell/Motiva Companies' operation for at least one year of all units in compliance with the emission limits established herein. The requirements for termination for Motiva as to the Delaware City Refinery include payment of all stipulated penalties incurred prior to the Closing Date that may be due to the United States or the State of Delaware, and the completion of the Supplemental and Beneficial Environmental Projects as required under the Consent Decree. At such time, if the Shell/Motiva Companies believes that it is in compliance with the applicable requirements of this Consent Decree and the relevant permits specified herein, and has paid any stipulated penalty required of the Shell/Motiva Companies by this Consent Decree, then the Shell/Motiva Companies shall so certify to the United States and the State Plaintiff and unless the United States or the State Plaintiff objects in writing with specific reasons within 120 days of receipt of the certification, the Court shall order the provisions of this Consent Decree applicable to the Shell/Motiva Companies be terminated on the Shell/Motiva Companies' motion. If the United States or the State Plaintiff objects to the Shell/Motiva Companies' certification, then the matter shall be submitted to the Court for resolution under Part XVI (Dispute Resolution) of this Consent Decree. In such case, the Shell/Motiva Companies shall bear the burden of proving that the relevant provisions of this Consent Decree shall be terminated.

83b. All provisions of this Consent Decree applicable to Premcor shall be subject to termination upon motion by the United States, the State of Delaware or Premcor after Premcor satisfies all requirements of this Consent Decree applicable to Premcor. The requirements for termination for Premcor, as to the Delaware City Refinery, include payment of all stipulated penalties that may be due from Premcor to the United States or the State of Delaware under this Consent Decree, installation of control technology systems as specified herein, the performance of all other consent decree requirements, the receipt of all permits specified herein, and EPA's receipt of the first calendar quarterly progress report following the conclusion of Premcor's operation for at least one year of all units in compliance with the emission limits established herein, all only with respect to the Delaware City Refinery. At such time, if Premcor believes that it is in compliance with the applicable requirements of this Consent Decree and the relevant permits specified herein, and has paid any stipulated penalty required of Premcor by this Consent Decree, then Premcor shall so certify to the United States and the State of Delaware, and unless the United States or the State of Delaware objects in writing with specific reasons within 120 days of receipt of the certification, the Court shall order the provisions of this Consent Decree applicable to Premcor be terminated on Premcor's motion. If the United States or the State of Delaware objects to Premcor's certification, then the matter shall be submitted to the Court for resolution under Part XVI (Dispute Resolution) of this Consent Decree. In such case, Premcor shall bear the burden of proving that the relevant provisions of this Consent Decree shall be terminated.

2004. So entered in accordance with the foregoing this _____ day of _____,

Melinda Harmon
United States District Court Judge
Southern District of Texas

FOR PLAINTIFF, UNITED STATES OF AMERICA:

Date: 5.28.04

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Date: 5/19/04

Dianne M. Shawley
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U. S. v. Motiva Enterprises LLC, et al

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

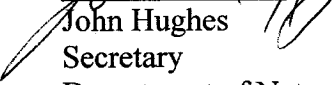
Date: 6/9/04

Thomas V. Skinner
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460


For Plaintiff-Intervener the State of Delaware:

<

Date: 4-28-04


John Hughes
Secretary
Department of Natural Resources and
Environmental Control
89 Kings Highway
Dover, Delaware 19901

Date: 4-28-04


Valerie S. Csizmadia
Deputy Attorney General
Office of the Attorney General
102 West Water Street, Third Floor
Dover, Delaware 19904

**Preliminary Approval of Plaintiff-Intervener, the State of Louisiana, through the
Department of Environmental Quality:**

L

Harold Leggett, Ph.D.
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

Date: 5/18/04

Ted Broyles, II
Senior Attorney
Office of the Secretary
Legal Affairs Division
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

Date: 5/18/04

**For Northwest Air Pollution Authority of the State of Washington, A Washington
Municipal Corporation:**

By:



Laughlan H. Clark
Visser, Zender and Thurston, P.S.
1700 D Street
P. O. Box 5226
Bellingham, WA 98227

**For Motiva Enterprises LLC, Equilon Enterprises LLC, and Deer Park Refining
Limited Partnership:**

Date: 4/27/04

Judy Moorad
Vice President
Safety, Health and Environment
Shell Oil Products, U.S.
12700 Northborough Drive - NAX 300N
Houston, TX 77067-2508

For The Premcor Refining Group Inc.:

Bruce A. Jones
Vice President
Environment, Health and Safety
The Premcor Refining Group Inc.
1700 East Putnam
Old Greenwich, CT 06870

Date: 5/6/2004